

UNITED STATES DISTRICT COURT

for the

Eastern District of Wisconsin

United States of America

v.

Orvin Kay

Case No. 17-M-1203

Defendant(s)

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of (various, see below) in the county of Milwaukee in the Eastern District of Wisconsin, the defendant(s) violated:

Code Section

21 U.S.C. §§ 841(a)(1) & 841(b)(1)(C) and 846.

Offense Description

On at least the following dates:

October 1st, 3rd, 6th, 8th, 10th, 11th, 12th, 15th, 16th and 18th of 2016;
December 4th and 31st of 2016;
January 7th, 24th, 28th, and 30th of 2017

Orvin Kay distributed a controlled substance in violation of 21 U.S.C. §§ 841(a)(1) & 841(b)(1)(C)

This criminal complaint is based on these facts:

See affidavit for details.

☒ Continued on the attached sheet.

Complainant's signature

Neil McGrath, TFO, Drug Enforcement Agency

Printed name and title

Sworn to before me and signed in my presence.

Date:

2/1/17

City and state:

Milwaukee, Wisconsin

Judge's signature

U.S. Magistrate Judge

Printed name and title

**AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT AND ARREST
WARRANT**

I, Neil McGrath, being duly sworn, depose and state as follows:

I. INTRODUCTION AND AGENT BACKGROUND

1. The following affidavit is made in support of a criminal complaint and arrest warrant for Orvin Kay for violations of Title 21, United States Code, Sections 841(a)(1), 841(b)(1)(C) (distribution of a controlled substance).

2. I am employed as a Special Agent with the State of Wisconsin Department of Justice Division of Criminal Investigation (DCI), and have been a full-time sworn law enforcement officer for over 20 years. I am currently assigned as a Task Force Officer (TFO) with the Drug Enforcement Administration (DEA) Tactical Diversion Squad (TDS). I have extensive training and experience in controlled substance trafficking investigations. As part of my duties as a DEA TFO, I investigate criminal violations relating to narcotics trafficking offenses, including, but not limited to, violations of Title 21, United States Code, Sections 841(a)(1), 843(b) and 846, and Title 18, United States Code, Sections 1956 and 1957, and other related offenses. Based on my experience at DCI as a Special Agent and as a DEA TFO:

- a. I have utilized informants to investigate drug trafficking. Through informant interviews, and extensive debriefings of individuals involved in drug trafficking, I have learned about the manner in which individuals and organizations distribute controlled substances in Wisconsin and throughout the United States;
- b. I have also relied upon informants to obtain controlled substances from dealers, and have made undercover purchases of controlled substances;

- c. I have extensive experience conducting street surveillance of individuals engaged in drug trafficking. I have participated in the execution of numerous search warrants where controlled substances, drug paraphernalia, and drug trafficking records were seized;
- d. I am familiar with the appearance and street names of various drugs, including marijuana, heroin, oxycodone, cocaine, cocaine base, ecstasy, and methamphetamine. I am familiar with the methods used by drug dealers to package and prepare controlled substances for sale. I know the street values of different quantities of the various controlled substances;
- e. I am familiar with the language utilized over the telephone to discuss drug trafficking, and know that the language is often limited, guarded, and coded;
- f. I know that drug traffickers often use electronic equipment, such as computers, laptop computers, and cellular and land-line telephones, to conduct drug trafficking operations;
- g. I know that drug traffickers commonly have firearms and ammunition in their possession, and at their residences and other locations where they exercise dominion. Further, I know that they use these firearms and ammunition to protect their drugs stash and proceeds;
- h. I know that drug traffickers often put their telephones in nominee names in order to distance themselves from telephones that are utilized to facilitate drug trafficking;
- i. I know that drug traffickers often use drug proceeds to purchase assets such as vehicles, property, and jewelry. I also know that drug traffickers often use nominees to purchase and/or title these assets in order to avoid scrutiny from law enforcement officials; and
- j. I know that drug traffickers often use rental vehicles to avoid detection by law enforcement officials.

3. This affidavit is based upon my personal knowledge, and upon information reported to me by other federal, state, and local law enforcement officers during the course of their official duties, all of whom I believe to be truthful and reliable. Throughout this affidavit, reference will be made to case agents. Case agents

are those federal, state, and local law enforcement officers who have directly participated in this investigation, and with whom I have had regular contact regarding this investigation.

4. I am an investigative or law enforcement officer of the United States within the meaning of Section 2510(7) of Title 18, United States Code, in that I am empowered by law to conduct investigations of and to make arrests for federal felony offenses.

5. Because this affidavit is submitted for the limited purpose of securing authorization for the warrant described above, I have not included each and every fact known to me concerning this investigation. I have set forth only the facts that I believe are essential to establish the necessary foundation for the requested search warrant.

II. PROBABLE CAUSE

Heather Gehrig Describes how Lance Bruette used a Milwaukee source, later determined to be Orvin Kay, to purchase prescription pills.

6. On July 28, 2016, case agents interviewed Heather Gehrig who stated that she began purchasing Oxycodone 30 mg tablets from Lacey "Butler" Stanick in the summer of 2013. In fall of 2013 Stanick told Gehrig to start purchasing Oxycodone directly from Stanick's sources, Lance Bruette and Frank Lawrence.

7. By summer of 2014, Gehrig was purchasing approximately four 30 mg Percocet pills for \$45 each on a daily basis from Bruette. In summer 2015 Gehrig began driving Bruette to Milwaukee to purchase Oxycodone from his sources. From October 2015 through December 2015, Gehrig was driving Bruette on a near nightly basis.

Bruette was present on most of these trips, however, if he could not go, he would send an individual in his place to ride with Gehrig. Bruette or whomever he sent to Milwaukee never travelled with less than \$2000 to purchase Oxycodone from Milwaukee sources, purchasing between 100-600 Oxycodone pills each trip.

8. According to Gehrig, Bruette had three sources for Oxycodone in Milwaukee. One met Bruette at the residence located at 5441 N. 24th St., Milwaukee. Bruette would always have to call or text the source once he was in Milwaukee and receive confirmation that the source was available and ready to provide pills at the residence. When Bruette would arrive back in the northern Wisconsin area he would distribute the Oxycodone to individual users as well as co-conspirators who would sell the Oxycodone for Bruette. Once the dealers had sold the pills for Bruette, he would collect the proceeds and travel back to Milwaukee to purchase more.

Law Enforcement Investigates Orvin Kay

9. On October 3, 2016, I conducted surveillance at the residence located at 5441 N. 24th St., Milwaukee, WI. I observed a Ford Explorer parked in the driveway of the residence bearing Wisconsin registration plate 519 XMK. A subsequent check with the Wisconsin Department of Transportation revealed 519 XMK is a 2013 Ford Explorer registered to Orvin Andrew Kay DOB: 02-03-1960 at 5441 N. 24th St., Milwaukee, WI. Case agents have observed that this vehicle is regularly parked overnight at 5441 N. 24th St., Milwaukee, WI. Case agents have also observed the vehicle enter and exit the driveway of 5441 N. 24th St., Milwaukee, WI on a regular basis.

10. On September 28, 2016, case agents learned that Orvin Kay had been the

account holder for mobile number (414) 235-1176 since February 16, 2006. On October 19, 2016 I received a court order from Oneida County to have a trap and trace device and pen register device installed on Orvin Kay's mobile phone. Subpoenaed telephone records revealed that Orvin Kay's telephone had 766 contacts with Bruette's previous telephone from February 28, 2016 to December 9, 2016. Subpoenaed telephone records also revealed that Orvin Kay's telephone had 76 contacts with a Bruette's new telephone from December 24, 2016 to January 7, 2017.

11. On November 17, 2016, case agents installed remote video surveillance outside of 5441 N. 24th St., Milwaukee, Wisconsin to obtain video surveillance of Orvin Kay's residence. Remote video surveillance and cell phone records—obtained via a trap and trace device and a pen register device on Bruette's phone, as well as a "Ping" order that records cell tower information—confirm that Bruette traveled to Kay's residence located at 5441 N. 24th St., Milwaukee, Wisconsin and stayed there for approximately eight minutes on December 4, 2016. Remote video surveillance and cell phone contacts confirm that Bruette traveled to Kay's residence again on December 31, 2016. This time, Bruette stayed for approximately six minutes. Finally, remote video surveillance and cell phone contacts confirm that Bruette traveled to Kay's residence on January 7, 2017, and stayed for approximately nine minutes. Based on training, experience, the investigation to date, cell phone activity, and the short duration of these visits, case agents believe that Kay was distributing Oxycodone to Bruette during these visits, as he had done many times when Bruette was with Gehrig.

12. On January 24, 2017, at 11:17 p.m., case agents observed a Black Dodge

Caravan that they have observed Bruette operate numerous times pull into Kay's residence. The van left Kay's residence three minutes later. Case agents observed the same van return to Bruette's residence at 2:58 a.m. on January 25, 2017. Cell phone records confirm that Bruette and Kay had several contacts on January 24, 2017, before Bruette traveled to Kay's residence. During the early morning hours of January 28, 2017, remote video surveillance shows the same black van arrive at Kay's residence located at 5441 N. 24th St., Milwaukee, Wisconsin at 1:56 a.m. and leave five minutes later. Based on training, experience, the investigation to date, cell phone records, and the short duration of the visits, case agents believe that Kay was distributing Oxycodone pills to Bruette during these trips.

13. On January 30, 2017, case agents observed the same black van arrive at Kay's residence and leave nine minutes later. Case agents conducted mobile surveillance of Bruette as he drove in the direction of his residence. Case agents conducted a traffic stop on Bruette's vehicle in Oneida County at approximately 3:00 a.m. on January 31, 2017. A police K-9 alerted on the vehicle for the presence of narcotics. Case agents then searched the vehicle and located 12 Oxycodone 30 mg pills under the center console inside of a plastic bag.

Text Messages Between Kay and Bruette Confirm Oxycodone Transactions

14. A search of information from Bruette's Verizon Cloud account, including text messages from Bruette's phone from September and October of 2016, revealed numerous instances of Bruette setting up Oxycodone transactions with Kay. Case agents believe that it was Bruette's Verizon Cloud account because it was the cloud

account associated with his cellular telephone number. Case agents believe that the number they subpoenaed was Bruette's number because the mother of Bruette's children—who regularly contacts Bruette—provided that number to case agents. Furthermore, case agents have corroborated that the number belonged to Bruette through cell tower information related to this phone matching physical surveillance of Bruette.

15. Text messages between Bruette and Kay revealed a pattern of Bruette texting Kay a monetary amount before he left Minocqua. He would then text Kay when he was approximately an hour away, and he would text Kay again when he was 10 minutes away. On the dates of the below transcribed text messages, cell tower records corroborate that Bruette drove from Minocqua to Milwaukee. Several representative text message samples obtained from Bruette's Verizon Cloud account are transcribed below:

a. October 1, 2016 text message exchange:

Lance Bruette: 620

Orvin Kay: Kool

Lance Bruette: S.P.

Orvin Kay: Ok

16. Based on their training, experience, the investigation to date, and cell tower records, case agents believe that this text message exchange reflects Kay distributing 31 Oxycodone 30 mg pills to Bruette, and Bruette picking up those pills from Kay's residence.

a. October 3, 2016 text message exchange:

Lance Bruette: Be coming your way in about an hour ish be leaving
Orvin Kay: Ok
Lance Bruette: On way 800
Orvin Kay: Ok cool text me like a hour away so I can be there am over my
brother now ok buddy see u soon
Lance Bruette: K...
Lance Bruette: Hour
Orvin Kay: Ok
Lance Bruette: SP
Orvin Kay: Ok

17. Based on their training, experience, the investigation to date, and cell tower records, case agents believe that this text message exchange reflects Kay distributing 40 Oxycodone 30 mg pills to Bruette, and Bruette picking up those pills from Kay's residence.

a. October 6, 2016 text message exchange:

Lance Bruette: Hour...560\$
Orvin Kay: Ok
Lance Bruette: SP
Orvin Kay: Ok

18. Based on their training, experience, the investigation to date, and cell tower records, case agents believe that this text message exchange reflects Kay distributing 28 Oxycodone 30 mg pills to Bruette, and Bruette picking up those pills from Kay's residence.

a. October 8, 2016 text message exchange:

Lance Bruette: Hour 560\$
Orvin Kay: Ok
Lance Bruette: SP
Orvin Kay: Ok

19. Based on their training, experience, the investigation to date, and cell

tower records, case agents believe that this text message exchange reflects Kay distributing 28 Oxycodone 30 mg pills to Bruette, and Bruette picking up those pills from Kay's residence.

a. October 10, 2016 text message exchange:

Lance Bruette: Hour. 700

Orvin Kay: Ok

20. Based on their training, experience, the investigation to date, and cell tower records, case agents believe that this text message exchange reflects Kay distributing 35 Oxycodone 30 mg pills to Bruette, and Bruette picking up those pills from Kay's residence.

a. October 11, 2016 text message exchange:

Lance Bruette: On way been on rd 35 minutes

Orvin Kay: Ok

Orvin Kay: What the number bud

Lance Bruette: 1 Grand

Orvin Kay: Kool

Lance Bruette: Hour

Orvin Kay: Ok

Lance Bruette: SP

Orvin Kay: Ok

21. Based on their training, experience, the investigation to date, and cell tower records, case agents believe that this text message exchange reflects Kay distributing 50 Oxycodone 30 mg pills to Bruette, and Bruette picking up those pills from Kay's residence.

a. October 12, 2016 text message exchange:

Lance Bruette: 600

Orvin Kay: Ok

Lance Bruette: Hour or less
Orvin Kay: Ok
Lance Bruette: SP
Orvin Kay: OK

22. Based on their training, experience, the investigation to date, and cell tower records, case agents believe that this text message exchange reflects Kay distributing 30 Oxycodone 30 mg pills to Bruette, and Bruette picking up those pills from Kay's residence.

a. October 15, 2016 text message exchange:

Lance Bruette: On Rd 1200
Orvin Kay: Ok cool
Lance Bruette: Hour
Orvin Kay: K
Lance Bruette: SP
Orvin Kay: K

23. Based on their training, experience, the investigation to date, and cell tower records, case agents believe that this text message exchange reflects Kay distributing 60 Oxycodone 30 mg pills to Bruette, and Bruette picking up those pills from Kay's residence.

a. October 16, 2016 text message exchange:

Lance Bruette: Come say hi?? Today
Orvin Kay: Yea
Lance Bruette: K I'll holler on rd I'm coming after I get off work
Orvin Kay: K
Lance Bruette: On rd. 1000
Orvin Kay: Ok
Lance Bruette: Hour
Lance Bruette: SP
Orvin Kay: K

24. Based on their training, experience, the investigation to date, and cell

tower records, case agents believe that this text message exchange reflects Kay distributing 50 Oxycodone 30 mg pills to Bruette, and Bruette picking up those pills from Kay's residence.

a. October 18, 2016 text message exchange:

Lance Bruette: What up
Lance Bruette: Hour, 520
Orvin Kay: Ok
Lance Bruette: SP
Orvin Kay: Ok

25. Based on their training, experience, the investigation to date, and cell tower records, case agents believe that this text message exchange reflects Kay distributing 26 Oxycodone 30 mg pills to Bruette, and Bruette picking up those pills from Kay's residence.

Frank Lawrence describes using Orvin Kay as a source of prescription pills.

26. Subpoenaed telephone records revealed that Orvin Kay's telephone had 74 contacts with Frank Lawrence's telephone between August 2, 2016, and November 6, 2016. These records also revealed that Kay's telephone had 27 contacts with Frank Lawrence's other telephone between July 29, 2016, and November 7, 2016.

27. On December 1, 2016 case agents interviewed Frank E. Lawrence. Lawrence stated Lance Bruette is the largest dealer of Oxycodone in the Rhinelander/Minocqua area. Bruette has several sources for Oxycodone in Milwaukee and introduced Lawrence to several of these sources in order for Lawrence to make trips to Milwaukee to obtain Oxycodone. Bruette's main source for Oxycodone is "Sean" (identified by photo as Orvin Andrew Kay). Kay is the largest prescription pill

source Lawrence knows. Kay sells blue Oxycodone 30 mg pills for \$20 each and has access to large quantities of these pills. Kay does not like to deal with people for quantities less than \$2000 (100 pills). Kay lives in Milwaukee and sells out of his home which is located in a nicer neighborhood in Milwaukee. Kay almost always had whatever quantity of pills Lawrence or Bruette wanted.

28. Lawrence was introduced to Kay by Bruette in approximately 2011 or 2012. Initially, Lawrence was making trips under the direction of Bruette, taking Bruette's money and combining some of his to obtain pills from Kay. Bruette would give Lawrence \$200 and some pills for making the trip. Bruette and Lawrence had a falling out and Lawrence then began going to Kay on his own. Lawrence would call or text Kay when he was leaving Minocqua and use code to ask for pills by saying the numbers of an address for how many pills Lawrence wanted. Once in Milwaukee Lawrence would again contact Kay by phone who would tell Lawrence to come to his house or to an address Kay was at and then to his house.

29. Lawrence estimated that since 2012 he averaged going to Kay once a week to pick up \$2000 worth of pills (100 pills). Lawrence stated that there were periods of time that he did not go to Kay such as when he was in rehab one time for four months and another for two months. Lawrence believed Bruette went down to get pills from Kay on average at least two times a week for \$4000 worth of pills (200 pills). Bruette would on average receive \$2000-\$4000 worth of pills from Kay every two to three days. There was a time when Bruette would go down for \$7000 to \$8000 worth of pills every two to three days. Several people would give Bruette money to run down and obtain

pills.

30. On one occasion, Lawrence observed another individual leaving Kay's residence when Lawrence arrived to pick up Oxycodone. When inside the residence, Kay suggested to Lawrence that he do what the other dealer did, which was take one trip per month and purchase \$7,000 to \$14,000 worth of pills (350-700 pills). On that occasion, Kay indicated the other individual had picked up \$14,000 worth of pills (700 pills) while Lawrence had only picked up \$5000 worth (250 pills). Another time, Kay asked Lawrence if he knew an individual who another Oxycodone dealer was sending down to pick up pills, however, Lawrence did not know the individual.

31. On October 3, 2016, case agents observed a vehicle registered to Frank Lawrence parked in the drive way of Orvin Kay's residence for approximately 10 minutes.

III. CONCLUSION

32. Based on the facts contained within this affidavit, there is probable cause to believe that on at least the following dates: October 1st, 3rd, 6th, 8th, 10th, 11th, 12th, 15th, 16th, and 18th of 2016; December 4th and December 31st of 2016; January 7th, 24th, 28th, and 30th of 2017 in the State and Eastern District of Wisconsin, Orvin Kay, distributed Oxycodone in violation of Title 21, United States Code, Sections 841(a)(1), 841(b)(1)(C).